

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JEFFREY T. MILLER, JUDGE PRESIDING

UNITED STATES OF AMERICA, ) CASE NO. 10CR4246-JM  
)  
)  
PLAINTIFF, )  
)  
-V- )  
) SAN DIEGO, CALIFORNIA  
) JUNE 10, 2013  
) 2:40 P.M.  
)  
BASAALY SAEED MOALIN, )  
MOHAMED MOHAMED MOHAMUD, )  
ISSA DOREH, )  
AHMED NASIR TAALIL MOHAMUD, )  
)  
DEFENDANTS. )  
\_\_\_\_\_)

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
TELEPHONIC STATUS CONFERENCE

APPEARANCES:

FOR THE GOVERNMENT: LAURA E. DUFFY, UNITED STATES ATTORNEY  
BY: WILLIAM P. COLE, ESQ.  
CAROLINE PINEDA HAN, ESQ.  
ASSISTANT U.S. ATTORNEYS  
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DEPARTMENT OF JUSTICE  
  
BY: STEVEN PHILLIP WARD, ESQ.  
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JUNE 10, 2013

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2 BY: ALICE L. FONTIER, ESQ.  
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6  
7 LAW OFFICE OF JOSHUA DRATEL  
8 BY: JOSHUA L. DRATEL, ESQ.  
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11 FOR DEFENDANT M. MOHAMUD: LAW OFFICE OF LINDA MORENO  
12 BY: LINDA MORENO, ESQ.  
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14 TAMPA, FLORIDA 33679

15 FOR DEFENDANT DOREH: CIVIL RIGHTS CLINIC  
16 BY: AHMED GHAPPOUR, ESQ.  
17 727 E. DEAN KEETON STREET  
18 AUSTIN, TEXAS 78705

19 FOR DEFENDANT A. MOHAMUD: DURKIN & ROBERTS  
20 BY: THOMAS A. DURKIN, ESQ.  
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SAN DIEGO, CALIFORNIA; MONDAY, JUNE 10, 2013; 2:40 P.M.

(COUNSEL APPEARING TELEPHONICALLY)

**THE COURT:** GOOD AFTERNOON, EVERYONE. I HOPE YOU CAN ALL HEAR ME.

**MR. DRATEL:** YES, YOUR HONOR.

**MS. FONTIER:** YES, YOUR HONOR.

**MS. MORENO:** YES, YOUR HONOR.

**THE COURT:** WHAT I'M GOING TO DO IS CALL THE CASE, AND THEN YOU CAN EACH RESPOND, INDICATING YOUR ATTENDANCE BY NAME. THAT WOULD BE APPRECIATED. AND THEN ANY TIME YOU NEED TO SPEAK, PLEASE STATE YOUR NAME SO THAT OUR RECORD IS CLEAR.

THIS IS U.S. VERSUS MOALIN, 10CR4246, A TELEPHONIC CONFERENCE CONCERNING THE RESCHEDULING OF THE SENTENCINGS FOR ALL FOUR DEFENDANTS.

THE RECORD SHOULD REFLECT THAT I HAVE RECEIVED A LETTER FROM MR. DRATEL, DATED JUNE 4, 2013, SUGGESTING, IF NOT REQUESTING, THAT SENTENCING BE PUT OVER FROM JUNE 26TH, 2013, ITS CURRENT DATE, TO SOMETIME IN MID OCTOBER OF THIS YEAR. IT IS THIS LETTER THAT PROMPTED THIS TELEPHONE CONFERENCE, AT MY URGING.

MAY I PLEASE HAVE EACH OF THE ATTORNEYS STATE THEIR APPEARANCES. AND WHEN IT COMES TO DEFENSE COUNSEL, I WOULD APPRECIATE YOU INDICATING THAT YOU'RE WAIVING THE PRESENCE OF YOUR RESPECTIVE CLIENT. OBVIOUSLY, THIS BEING ONLY A SCHEDULING MATTER, I THINK THAT WOULD BE PERFECTLY APPROPRIATE.

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1 FURTHER, THE SYSTEM WE'RE USING REALLY DOESN'T ALLOW  
2 FOR LONG NARRATIVES, SUCH AS I AM ENGAGING IN RIGHT NOW. SO  
3 PLEASE KEEP YOUR RESPONSES FAIRLY SHORT, WITH BREAKS, SO IF  
4 SOMEBODY NEEDS TO RESPOND, WE CAN DO THAT EFFECTIVELY.

5 OKAY. WITH THE APPEARANCES, LET ME START WITH  
6 MR. COLE AND/OR MR. HAN.

7 **MR. COLE:** YES, YOUR HONOR. WILLIAM COLE AND CAROLYN  
8 HAN AND STEVEN WARD, FOR THE UNITED STATES.

9 **THE COURT:** THANK YOU.

10 NEXT.

11 **MR. DRATEL:** GOOD AFTERNOON, YOUR HONOR. JOSHUA  
12 DRATEL FOR MR. MOALIN, AND ALICE FONTIER IS ALSO ON THE CALL.

13 **THE COURT:** THANK YOU.

14 **MS. FONTIER:** GOOD AFTERNOON, YOUR HONOR.

15 **MS. MORENO:** GOOD AFTERNOON, YOUR HONOR. LINDA  
16 MORENO ON BEHALF OF MR. MOHAMED MOHAMUD, WHO IS WAIVING HIS  
17 APPEARANCE.

18 **MR. DRATEL:** I'M SORRY, YOUR HONOR. THIS IS  
19 MR. DRATEL AGAIN. YES, WE WAIVE MR. MOALIN'S APPEARANCE.

20 **THE COURT:** GREAT. THANK YOU. GOOD AFTERNOON.

21 **MR. GHAPPOUR:** GOOD AFTERNOON, YOUR HONOR. AHMED  
22 GHAPPOUR ON BEHALF OF ISSA DOREH, WHO IS WAIVING HIS  
23 APPEARANCE.

24 **THE COURT:** THANK YOU.

25 **MR. DURKIN:** JUDGE, TOM DURKIN AND JANIS ROBERTS ON

1 BEHALF OF MR. AHMED MOHAMUD, WHO IS ALSO WAIVING HIS APPEARANCE  
2 TODAY.

3 **THE COURT:** ALL RIGHT. THANK YOU, COUNSEL.

4 FIRST OF ALL, I'M GOING TO ASK MR. DURKIN TO SPEAK UP  
5 A LITTLE BIT IN THE FUTURE. I WAS ABLE TO GET THAT, BUT I  
6 DON'T THINK YOUR CONNECTION IS QUITE AS GOOD AS THE OTHERS,  
7 MR. DURKIN.

8 I APOLOGIZE FOR MY VOICE. I HAVE A LITTLE BIT OF  
9 LARYNGITIS RIGHT NOW SO I MAY NOT SOUND LIKE MYSELF, BUT HERE I  
10 AM.

11 OKAY. LET ME TELL YOU WHAT MY CONCERNS ARE. FIRST  
12 OF ALL, OBVIOUSLY, THIS CASE HAS BEEN FILED FOR SOME PERIOD OF  
13 TIME. I KNOW EVERYONE IS INTERESTED IN RESOLVING THIS CASE --  
14 THAT IS, GETTING THIS CASE TO COMPLETION AS QUICKLY AS  
15 POSSIBLE. THAT GOES WITHOUT SAYING.

16 LET ME SAY THIS: I HAVE NO DIFFICULTY WITH PUTTING  
17 THE MATTER OVER -- THAT IS, THE SENTENCINGS -- FOR A REASONABLE  
18 PERIOD OF TIME. I AM VERY CONCERNED ABOUT GOING ALL THE WAY  
19 OVER TO OCTOBER AS THE NEXT CALENDAR DATE. I'LL TELL YOU WHY.

20 FIRST OF ALL, IT'S USUALLY MY CUSTOM TO TAKE OFF MOST  
21 OF THE MONTH OF OCTOBER. I DON'T HAVE THOSE PLANS DOWN EXACTLY  
22 NOW, BUT CERTAINLY I WOULD ANTICIPATE THAT THERE WOULD BE A  
23 STRONG LIKELIHOOD I WOULD NOT BE AVAILABLE FROM EARLY OCTOBER,  
24 PERHAPS THROUGH THE END OF OCTOBER. SO WHAT I WOULD LIKE TO DO  
25 IS GET THIS BACK ON CALENDAR SOME TIME BEFORE OCTOBER.

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1 NOW, IN MR. DRATEL'S LETTER, HE REFERS TO  
2 MR. GHAPPOUR COMMENCING A TRIAL IN SEPTEMBER IN DALLAS. I  
3 DON'T KNOW WHAT DATE THAT IS, I DON'T KNOW WHAT THE LENGTH OF  
4 IT IS, BUT IT SEEMS TO ME THAT THE BEST TIME TO HAVE THESE  
5 SENTENCINGS RESET WOULD BE IN SEPTEMBER. AND I WOULD CERTAINLY  
6 WORK WITH COUNSEL.

7 OBVIOUSLY, YOU, MR. GHAPPOUR, TO SCHEDULE THE  
8 SENTENCINGS ANY DAY OF THE WEEK SO THAT IF YOU WERE NOT  
9 OTHERWISE ENGAGED, YOU COULD TAKE A QUICK TRIP TO SAN DIEGO.  
10 WE COULD DO A MONDAY OR A FRIDAY HEARING. THAT IS MY PRIMARY  
11 CONCERN.

12 AND WHOEVER WOULD LIKE TO RESPOND FIRST, PLEASE GO  
13 AHEAD.

14 **MR. GHAPPOUR:** THIS IS MR. GHAPPOUR. I AM AMENABLE  
15 TO THAT. AND IF WE WERE TO PICK A DAY OF THE WEEK, I WOULD  
16 PREFER A MONDAY, IF POSSIBLE.

17 **THE COURT:** ARE YOU SAYING THAT ANY MONDAY IN  
18 SEPTEMBER WOULD BE AGREEABLE? SO LONG AS WE CAN MAKE IT A  
19 MONDAY, WOULD IT AT LEAST DIMINISH ANY DIFFICULTIES FOR YOUR  
20 CALENDAR?

21 **MR. GHAPPOUR:** YES, YOUR HONOR. AND PREFERABLY, IF  
22 IT'S AT ALL POSSIBLE, TO THE 2ND OF SEPTEMBER. THAT WOULD BE  
23 GREAT.

24 **MS. FONTIER:** THAT IS LABOR DAY.

25 **MR. GHAPPOUR:** OH, THAT IS LABOR DAY. EXCELLENT.

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1 HOW ABOUT THE 3RD OF SEPTEMBER?

2 **MS. FONTIER:** SORRY TO INTERJECT. THIS IS ALICE  
3 FONTIER. I AM GOING TO BE OUT OF THE COUNTRY FROM  
4 SEPTEMBER 2ND THROUGH THE 9TH. I WILL BE RETURNING ON THE  
5 10TH.

6 **THE COURT:** OKAY. WHAT ABOUT SEPTEMBER 16?

7 **MR. GHAPPOUR:** FINE HERE.

8 **MR. DURKIN:** JUDGE, WE HAVE A PROBLEM WITH A TRIAL  
9 STARTING --

10 **MS. ROBERTS:** THE NEXT DAY.

11 **MR. DURKIN:** -- SEPTEMBER 17TH IN CHICAGO. AND IT'S  
12 A MULTI-DEFENDANT CASE.

13 **THE COURT:** WHAT ARE THE CHANCES OF THAT GOING,  
14 MR. DURKIN?

15 **MR. DURKIN:** I THINK PRETTY STRONG. THE DEFENDANTS  
16 ARE IN CUSTODY AND IT'S VERY LIKELY THAT IT WILL GO.

17 BUT I WAS GOING TO RAISE A SEPARATE ISSUE. I HAD  
18 TALKED TO BOTH MR. DRATEL AND MR. COLE ABOUT WHETHER OR NOT MY  
19 CLIENT COULD BE SENTENCED AFTER MR. DRATEL'S CLIENT. MY  
20 UNDERSTANDING IS THE GOVERNMENT DOESN'T OBJECT TO THAT, AND I  
21 DON'T THINK MR. DRATEL DOES, EITHER. AND I THINK IT WOULD BE  
22 VERY BENEFICIAL FOR MY CLIENT IF I COULD DO IT THAT WAY.

23 I THINK THERE COULD BE A POSSIBILITY OF MITIGATING  
24 EVIDENCE THAT I COULD INTRODUCE. SO I WOULD ASK THAT  
25 REGARDLESS OF MY SCHEDULE. BUT I THINK THIS TRIAL IS PRETTY

1 FIRMLY SET, JUDGE. IT'S AT LEAST TWO WEEKS. IT'S A FAIRLY  
2 HIGH-PROFILE CASE INVOLVING STATE COURT ALLEGATIONS OF  
3 TERRORISM IN THE NATO PROTESTS, AND THE JUDGE IS KEEPING US  
4 UNDER A VERY, VERY TIGHT --

5 **THE COURT:** MR. DURKIN, WHAT TIME DOES THAT START?  
6 WHAT DATE IN SEPTEMBER DOES THAT START?

7 **MR. DURKIN:** IT STARTS ON THE 17TH.

8 **THE COURT:** WELL, I'M NOT WEDDED TO HAVING ALL FOUR  
9 DEFENDANTS GO FORWARD ON THE SAME DATE. THAT WOULD BE OPTIMAL,  
10 OBVIOUSLY, BUT IF CIRCUMSTANCES DON'T ALLOW FOR THAT THEN THEY  
11 DON'T ALLOW FOR IT.

12 IT SOUNDS TO ME AS THOUGH THE OTHER THREE DEFENDANTS,  
13 HOWEVER, COULD GO FORWARD ON THE 16TH OR THE 17TH. IS THAT  
14 TRUE?

15 **MR. DRATEL:** THAT IS CORRECT, YOUR HONOR. THIS IS  
16 MR. DRATEL FOR MR. MOALIN. CERTAINLY THAT IS THE CASE.

17 **MR. GHAPPOUR:** YOUR HONOR, THIS IS MR. GHAPPOUR FOR  
18 MR. DOREH. I ALSO HAVE AN INCREDIBLY HIGH-PROFILE TRIAL  
19 STARTING ON THE 3RD OF SEPTEMBER -- OR IT'S SLATED TO START ON  
20 THE 3RD OF SEPTEMBER. MY CLIENT IS THE ALLEGED UNOFFICIAL  
21 SPOKESPERSON FOR THE HACKING COLLECTIVE ANONYMOUS. IT'S  
22 BASICALLY WORLD NEWS.

23 BECAUSE I JUST MADE AN APPEARANCE ON THE CASE ABOUT A  
24 MONTH AGO, IT'S LOOKING LIKE IT WILL BE A MONTH TRIAL. SO  
25 WHILE I WILL ACCOMMODATE THE COURT IN ANY WAY I CAN, TO THE



1 EXTENT THAT MR. DURKIN HAS A LATER DATE, IF IT GOES INTO  
2 OCTOBER, I WOULD VERY MUCH APPRECIATE ALSO BEING BUMPED, IF  
3 THAT'S POSSIBLE. IF NOT, OF COURSE, I CAN ACCOMMODATE THE  
4 COURT.

5 **THE COURT:** WHAT ABOUT AUGUST? WHAT ABOUT LATE  
6 AUGUST?

7 **MR. GHAPPOUR:** YOUR HONOR, ARE YOU TALKING DIRECTLY  
8 TO ME, MR. GHAPPOUR?

9 **THE COURT:** I'M TALKING TO EVERYONE.

10 **MR. DRATEL:** YOUR HONOR, THIS IS MR. DRATEL. LATE  
11 AUGUST MAY BE A PROBLEM BECAUSE THE TRIAL THAT BEGINS JULY 15,  
12 WE JUST LEARNED FRIDAY AT A PRETRIAL CONFERENCE THAT THE  
13 GOVERNMENT ANTICIPATES THAT ITS CASE WILL BE FOUR WEEKS OF  
14 PRESENTATION. WE ANTICIPATE NOT ONLY JURY SELECTION LASTING A  
15 FEW DAYS -- BECAUSE THE CASE WAS SUBJECT TO SOME RECENT ADVERSE  
16 PUBLICITY -- BUT ALSO THAT WE HAVE A DEFENSE CASE IN WHICH THE  
17 DEFENDANT MAY VERY WELL TESTIFY.

18 SO I DON'T WANT TO SCHEDULE SOMETHING IN LATE AUGUST  
19 AND THEN COME BACK TO THE COURT AND SAY WE'RE STUCK WITH A JURY  
20 OUT, OR EVEN STILL ON TRIAL THROUGH THE LAST PART OF AUGUST.  
21 THE 16TH OF SEPTEMBER IS SUFFICIENTLY OUT THERE THAT I AM  
22 CONFIDENT THAT THERE WON'T BE A PROBLEM.

23 **THE COURT:** OKAY. YOU KNOW, PART OF THE ISSUE IS --  
24 AND I KNOW YOU ALL APPRECIATE THIS -- YOU ARE ALL VERY BUSY,  
25 AND CERTAINLY THE COURT HAS OTHER MATTERS IT HAS TO DEAL WITH.

1           YOU KNOW, THIS CASE SHOULD TAKE PRIORITY, IN MY  
2 VIEW -- A HIGH PRIORITY WITH ALL OF YOU, FOR REASONS THAT ARE  
3 TOO OBVIOUS TO EVEN PUT ON THE RECORD. ALL OF THESE FOLKS ARE  
4 AWAITING SOME KIND OF FINAL DISPOSITION IN THE CASE SO THAT  
5 THEIR APPEALS CAN MOVE FORWARD AND THEY CAN LOOK FORWARD TO THE  
6 NEXT CHAPTER OF THIS CASE.

7           BECAUSE YOU ARE ALL SO BUSY AND YOU HANDLE  
8 HIGH-PROFILE CASES AND RELATIVELY LENGTHY CASES, IT SEEMS THAT  
9 WE'RE ALWAYS GOING TO HAVE THE POTENTIAL FOR ONE OR MORE OF THE  
10 PARTIES NOT BEING AVAILABLE AT ANY GIVEN POINT IN TIME. AND  
11 WHAT I SEEM TO BE HEARING IS THAT AUGUST IS OUT. AND I CAN  
12 APPRECIATE THAT. SEPTEMBER BECOMES DICEY FOR MR. GHAPPOUR, AND  
13 THEN FOR MR. DURKIN FOR OTHER REASONS. OCTOBER, A GOOD PART OF  
14 OCTOBER I'M GOING TO BE OUT. AND THEN ALL OF A SUDDEN WE ARE  
15 IN THE HOLIDAY SEASON, NOVEMBER AND DECEMBER.

16           SO THIS CASE COMMENCED IN JANUARY OF THIS YEAR --  
17 THAT IS, WE BEGAN TRIAL AT THE END OF JANUARY OF THIS YEAR.  
18 AND I CERTAINLY DON'T WANT THE SENTENCING MATTERS TO GO OVER  
19 FOR A PERIOD OF TIME APPROACHING A YEAR. SO I WANT TO WORK  
20 WITH ALL COUNSEL, AND I WANT TO GET THIS CASE COMPLETED AT THE  
21 EARLIEST POSSIBLE TIME, WHILE ACCOMMODATING YOUR SCHEDULE AND  
22 NEED TO BE IN OTHER PLACES IN OTHER SIGNIFICANT MATTERS.

23           MR. GHAPPOUR, IT MAY COME DOWN TO YOUR CASE GETTING  
24 PUT OVER FOR A PERIOD OF TIME, WHICH IS ALWAYS POSSIBLE. I WAS  
25 LOOKING AT THE COURT NUMBERS FOR THESE CASES, AND THEY SEEM TO

1 BE 2013 -- CASES FILED IN 2012 AND 2013. SO THEY ARE NOT TOO  
2 OLD AT THIS POINT, I'M ASSUMING.

3 BUT IN ANY EVENT, I'M LOOKING, THEN, AT THE DATE OF  
4 EITHER SEPTEMBER 16 OR 17, IF THAT IS EASIER.

5 **MR. GHAPPOUR:** YOUR HONOR, THIS IS MR. GHAPPOUR. I  
6 CAN ACCOMMODATE THE 16TH, IF THAT WOULD BE EFFICIENT.

7 **THE COURT:** OKAY.

8 **MS. MORENO:** YOUR HONOR, THIS IS LINDA MORENO ON  
9 BEHALF OF MR. MOHAMED. I CAN ALSO BE PRESENT ON  
10 SEPTEMBER 16TH. THAT WORKS FOR ME.

11 **THE COURT:** OKAY. THEN WE'LL WORK WITH THAT DATE OF  
12 SEPTEMBER 16 FOR ALL OF THE DEFENDANTS, WITH THE EXCEPTION OF  
13 MR. DURKIN'S CLIENT.

14 AND, MR. DURKIN, I'M GOING TO HAVE TO SET A DATE FOR  
15 HIM.

16 **MR. DURKIN:** I WAS GOING TO SUGGEST IF YOU COULD GIVE  
17 ME SEPTEMBER 30TH. I THINK EVEN IF I'M NOT DONE, IF I GIVE THE  
18 JUDGE ENOUGH ADVANCE NOTICE, THAT I COULD COME ON THAT SUNDAY  
19 AND COME BACK THAT NIGHT. SO THE 30TH WOULD WORK FOR US.

20 **THE COURT:** OKAY. GOOD ENOUGH. THEN LET'S GO WITH  
21 THE 16TH FOR THE FIRST THREE DEFENDANTS, AND THEN THE 30TH OF  
22 SEPTEMBER FOR MR. DURKIN'S CLIENT.

23 AND, MR. COLE, I ASSUME THAT YOU WILL BE AVAILABLE --  
24 YOU AND YOUR COLLEAGUES WILL BE AVAILABLE ON THOSE TWO DATES?

25 **MR. COLE:** YES, YOUR HONOR.

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1           **THE COURT:** OKAY. WHAT I'M GOING TO DO, THEN, IS TO  
2 GET OUT A NEW SCHEDULING ORDER. AND THEN I'LL WORK WITH THOSE  
3 TWO DATES AND I'LL BACK UP THE OTHER DATES. LET ME SEE WHAT  
4 OTHER DATES YOU SUGGESTED HERE, MR. DRATEL. WELL, I TELL YOU  
5 WHAT. I WILL JUST GET OUT A SCHEDULING ORDER WITH ALL OF THE  
6 DATES SET FORTH. THE PSR HAS ALREADY BEEN PROVIDED FOR EACH  
7 DEFENDANT FOR OBJECTIONS TO THE PSR, CORRECTIONS, ADDITIONS,  
8 AND THEN FOR THE SENTENCING MEMORANDUM AND OTHER DOCUMENTATION  
9 COMING IN. OKAY.

10           **MR. DURKIN:** THANK YOU, JUDGE.

11           **THE COURT:** I THINK WE'RE SQUARED WITH EVERYONE.  
12 DOES ANYONE ELSE NEED TO MAKE ANY COMMENT OR  
13 SUGGESTIONS AT THIS POINT? IF SO, GO AHEAD.

14           **MR. DRATEL:** YOUR HONOR, THIS IS MR. DRATEL. DID YOU  
15 SET A TIME FOR THE 16TH?

16           **THE COURT:** YES. ALL TIMES WILL BE 9:00 A.M. SO IT  
17 WILL BE SEPTEMBER 16. THAT'S A MONDAY, AT 9:00 A.M.

18 SAME FOR MR. DURKIN. SEPTEMBER 30TH AT 9:00 A.M.

19           **MR. DRATEL:** OKAY. VERY GOOD. THANK YOU, YOUR  
20 HONOR.

21           **THE COURT:** ALL RIGHT. LOOK FOR THE ORDER AND THEN I  
22 THINK THAT'S ABOUT IT.

23 THANKS, COUNSEL, TO ALL OF YOU, FOR BEING AVAILABLE  
24 FOR THIS CONFERENCE.

25           **MR. DRATEL:** THANK YOU, YOUR HONOR. FEEL BETTER.

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